UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Via Email: mmizuki@martinellis.com

In Reply Refer to:
S. Martinelli & Company
227 East Beach Street
Watsonville, California 95076

Mark Mizuki
Vice President of Operations
S. Martinelli & Company
227 East Beach Street
Watsonville, California 95076

RE: Notification of Potential Enforcement Action for Violations of Section 312 of the Emergency Planning and Community Right-to-Know Act and Section 112(r)(1) of the Clean Air Act

Dear Mark Mizuki:

As you know, representatives from the U.S. Environmental Protection Agency, Region 9 ("EPA") conducted an inspection on September 29, 2021, of the S. Martinelli & Co. (the "Company") East Beach facility located at 227 East Beach Street, Watsonville, California 95076 ("Facility"). The purpose of the inspection was to determine the Facility's compliance with requirements under the Emergency Planning and Community Right-to-Know Act ("EPCRA") sections 304-312, 42 U.S.C. §§ 11004-11022; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") section 103, 42 U.S.C § 9603; and the General Duty Clause of section 112(r)(1), of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r)(1).

Based upon the information obtained during our investigation, EPA is prepared to initiate a civil administrative action against the Company to ensure compliance with federal law and assess a penalty pursuant to sections 325(c) and (d) of the EPCRA, 42 U.S.C. § 11045(c) and (d) and section 113 of the CAA, 42 U.S.C. § 7413. The anticipated administrative action includes violations of EPCRA section 312, 42 U.S.C. § 11022, and its implementing regulations, and CAA section 112(r)(1), 42 U.S.C. § 7412(r)(1), the "General Duty Clause," by which the owners and operators of facilities producing, processing, handling or storing regulated substances have a general duty to identify hazards which may result from accidental releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

Specifically, EPA is considering the allegations described below against the Company. For each allegation, the corresponding area of concern (AOC) identified in EPA's Offsite Inspection Report sent to the Facility on December 17, 2021, is provided.

EPCRA Section 312, 40 CFR part 370

1) **EPCRA Section 312, Tier II Reporting.** EPA identified multiple deficiencies in the submittals of the Facility's Hazardous Materials and Waste Inventory Matrix Report. The report must be submitted between January 1 and March 1 for the preceding calendar year. 42 U.S.C. § 11022(a)(2); 40 CFR § 370.45. In 2021, there was no submittal for the reporting year (RY) 2020. In 2020, the report for RY 2019 was submitted on September 14, 2020. In 2019, the report for RY 2018 was submitted on August 5, 2019. In 2018, the report for RY 2017 was submitted on December 21, 2018. (AOC 1)

CAA 112(r)(1) General Duty Clause

Design and Maintain a Safe Facility

The Company failed to design and maintain a safe facility taking such steps as are necessary to prevent accidental releases of a regulated substance, as identified in the following deficiencies.

2) At the time of EPA's inspection, the ammonia machinery room (AMR) exhaust fan switch was in the "off" position while the continuous ventilation system was operating, which indicates that the switch in the control box is not connected to the continuous ventilation system.[1] (AOC 4) An example of an industry standard of care is:

    a) International Institute of Ammonia Refrigeration (IIAR) 9, 2020 Section 7.3.11.2 states, "A clearly identified control switch for emergency ventilation with a tamper-resistant cover shall be located outside the machinery room and adjacent to the designated principal machinery room door unless the continuous ventilation operates at a rate at or above that required for emergency ventilation. The switch shall provide "ON/AUTO" override capability for emergency ventilation. The function of the switch shall be clearly marked by signage near the controls."

3) No visual or audible ammonia alarms are present either inside or outside the AMR or the mezzanine. (AOC 5) An example of an industry standard of care is:

    a) American National Standards Institute (ANSI)/IIAR 9, 2020, Section 7.3.12.1 (3) states, "Audible and visual alarms shall be provided inside the room. Additional audible and visual alarms shall be located outside of each entrance to the machinery room."

4) The mezzanine does not have tight construction. There is no door into the mezzanine area that houses a compressor, surge drum and plate and frame heat exchanger. The walls adjacent to the

[1] In a few instances, the Company's January 31, 2022, response to EPA's inspection report did not fully address EPA's concerns. Please see the Information Request enclosed with this letter for additional questions about topics covered by AOCs 4, 5, 8, 11, 15, 19, and 20.

bottling area are plastic strips that would allow an ammonia release to migrate into the bottling area. (AOC 6) Examples of industry standards of care include:

a) ANSI/IIAR 9, 2020, Section 7.3.2.1 states, "The machinery room shall be separated from the remainder of the building by tight-fitting construction."

b) ANSI/IIAR 9, 2020, Section 7.3.9.2 states, "Machinery room doors shall be self-closing and tight fitting."

5) At the time of EPA's inspection, the ammonia detector inside the AMR was set to activate an alarm at 125 ppm, and the ammonia detector inside the mezzanine was set to activate an alarm at 50 ppm. (AOC 7) At this Facility, a setpoint of 25 ppm is appropriate. Examples of industry standards of care are:

a) American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 15, 2013, Section 8.11.2.1 states, "Each refrigerating machinery room shall contain a detector . . . that actuates an alarm and mechanical ventilation . . . at a value not greater than the corresponding [threshold limit value - time-weighted average (TLV-TWA)] (or toxicity measure consistent therewith)." The TLV-TWA for ammonia is 25 ppm.

b) IIAR-2, 2021 Section 13.3.3 states, "Detection of ammonia concentrations equal to or exceeding 25 ppm shall activate visual indicators [and] audible alarms . . . ." See also IIAR-2, 2014, Section 6.13.1 and ANSI/IIAR 2-2008, Section 13.2.3.1.

c) CalOSHA's Permissible Exposure Limit for ammonia is 25 ppm. Cal. Code Regs. title 8, Section 5155, Table AC-1.

6) At the time of EPA's inspection, the primary exit door from the AMR did not contain panic hardware. The access door to the roof from the AMR did not swing in the direction of egress, did not contain panic hardware and was not tight fitting at the bottom. (AOC 8) Examples of industry standards of care include:

a) ANSI/IIAR 2, 1992, Section 4.4.8 states, "Ammonia machinery rooms shall have tight-fitting doors which open outward and are provided with panic type hardware. They shall be adequate in number to insure [ensure] freedom for persons to escape in an emergency. Any doors communicating with the building shall be approved, self-closing fire doors."

b) ANSI/IIAR 9, 2020, Section 7.3.2.1 states, "The machinery room shall be separated from the remainder of the building by tight-fitting construction."

c) ANSI/IIAR 9, 2020, Section 7.3.9.2 states, "Machinery room doors shall be self-closing and tight fitting."

7) At the time of EPA's inspection, exhaust from the AMR discharged horizontally onto the roof adjacent to the walkway leading to the evaporative condensers. (AOC 9) Examples of industry standards of care include:

a) ANSI/IIAR 2, 1992, Section 4.3.7 states, "The discharge of air shall be to the outdoors in such a manner as to not cause inconvenience or danger. Air discharge shall be directed to provide good dispersion, taking into account the natural air flow around the building, prevailing wind and surrounding structures."

b) ANSI/IIAR 9, 2020, Section 7.3.13.2 states, "Machinery rooms shall be vented to the outdoors by means of a mechanical exhaust ventilation system at a rate that complies with the codes and standards adopted at the time of installation or at the time that there was an addition or modification that would affect the emergency ventilation rate."

8) At the time of EPA's inspection, the accumulator in the AMR was not labeled. The surge drum and piping in the mezzanine area were not labeled. The surge drum and piping in the bottling area were not labeled. (AOC 10) An example of an industry standard of care is:

a) ANSI/IIAR 9, 2020, Section 7.2.9.4 states, "ammonia piping mains, headers, and branches shall be identified with the following information 1) "AMMONIA" 2) physical state of the ammonia 3) relative pressure level of ammonia, being low or high as applicable 4) Pipe service, which shall be permitted to be abbreviated 5) direction of flow."

9) The walls, roof, and floor of the AMR and mezzanine are not constructed of fire rated material. (AOC 11) An example of an industry standard of care is:

a) ANSI/IIAR 2, 1992, Section 4.4.1 states, "All structural components of the machinery room shall be constructed of non-combustible materials. Walls, floor, and ceiling shall be tight and of not less than one hour fire-resistive construction."

b) Earlier versions of IIAR-2 contained a similar standard of care. IIAR-2 1984 Section 4.4.1 states, "All structural components of the machinery room shall be constructed of non-combustible materials."

10) Noticeable vibration caused by the compressor is present in the wood floor. Vibration was observed on the piping associated with the plate and frame heat exchanger in the mezzanine. The compressor foundation are wooden beams placed on a wood floor and the mezzanine has a wood floor. (AOC 12) Examples of industry standards of care are:

a) IIAR 9, 2020, Section 7.3.2.4 states, "supports and foundations shall be adequate to prevent excessive vibration of the equipment."

b) IIAR-2 1984 Section 4.1.2 states, "All machinery shall be mounted in such a manner as to prevent excessive vibration from being transmitted to the building structure, or to connected equipment."

11) At the time of EPA's inspection, piping and valves associated with the condensers on the roof had surface corrosion. Surface corrosion was present on the condenser supports. Surface corrosion was present on ammonia piping associate with the plate and frame heat exchanger and valves above the compressor in the mezzanine. (AOC 13) Examples of industry standards of care include:

a) IIAR Bulletin 109, Section 4.7.4 states, "if corrosion exists on uninsulated piping, the pipe should be cleaned down to bare metal and painted with a rust preventive paint, and badly corroded pipe should be replaced."

b) ANSI/IIAR 6, 2019, Section 10.1.1 states, "where pitting, surface damage, general corrosion, or a combination thereof is visually observed on a metal surface of the pressure vessel, the deficient areas shall be further evaluated per Section 10.1.1."

12) The continuous ventilation system in the mezzanine is not adequately sized for an ammonia release and there is no emergency ventilation system in the mezzanine that is activated by ammonia detectors. The current continuous ventilation rate is in the mezzanine is 3,095 cubic feet per minute (CFM). Based on the maximum refrigerant charge of 1,000 lbs., the mezzanine, a minimum ventilation rate of 3,162 CFM must be provided. (AOC 14) An example of an industry standard of care is:

a) ANSI/IIAR 2, 1992, Section 4.3.3.1 and ASHRAE 15, 1989, Section 10.13.6.2 state, "The mechanical ventilation required to exhaust a potential accumulation of refrigerant due to leaks or a rupture of the system shall be capable of removing air from the machinery room."

b) ASHRAE 15, 2013, Section 8.11.5 states, "The mechanical ventilation required to exhaust an accumulation of refrigerant due to leaks or a rupture of the system shall be capable of removing air from the machinery room in not less than the following quantity:" $Q = 100 \times G^{0.5}$ (CFM), where G is the ammonia charge in pounds in the largest system.

13) There is only one exit from the roof area, and the exit is adjacent to the AMR exhaust discharge. (AOC 15) Examples of industry standards of care include:

a) ANSI/IIAR 2, 1992, Section 4.3.7 states, "The discharge of air shall be to the outdoors in such a manner as to not cause inconvenience or danger. Air discharge shall be directed to provide good dispersion, taking into account the natural air flow around the building, prevailing wind and surrounding structures."

b) ASHRAE 15, 1989, Section 6.2.1 states, "No portion of a refrigerating system shall be installed in or on a public stairway, stair landing, entrance or exit."

14) At the time of EPA's inspection, the surge drum and piping in the bottling area were not insulated and were covered in frost. (AOC 16) An example of an industry standard of care is:

a) IIAR 9, 2020, Section 7.2.6.1 states, "Piping and equipment surfaces not intended for heat exchange shall be insulated, treated, or otherwise protected to mitigate condensation and excessive frost buildup where the surface temperature is below the dew point of the surrounding air during normal operation and in an area where condensation and frost could develop and become a hazard to occupants or cause damage to the structure, electrical equipment, or refrigeration system."

15) At the time of EPA's inspection, the audible and visual ammonia alarms in the bottling area were not labeled. (AOC 17) An example of an industry standard of care is:

    a) IIAR 9, 2020, Section 7.2.9.1 (2) states, "The meaning of each alarm shall be clearly marked by signage near the visual and audible alarms."

Minimize Consequences of Accidental Releases

The Company failed to minimize the consequences of accidental releases of regulated substances, as identified in the following deficiencies.

16) The Facility is not meeting its emergency action plan training requirements set forth on page 46 of the plan: "Records shall be kept on file stating, which employees received training and the date they were trained." At the time of EPA's inspection, the Company had no records documenting the date and attendance lists of training for its emergency action plan specifically at the East Facility. (AOC 19) In addition to the Facility's emergency action plan, examples of industry standards of care include:

    a) The IIAR Ammonia Refrigeration Training Guideline (2007) Section 19.2.14 indicates that employees should receive training in emergency operations and shutdowns. It also states, "The trainee should also be fully aware of any facility security requirements such as identification cards, controlled access areas, traffic policies, and general evacuation and emergency notification procedures."

    b) OSHA regulation 29 CFR § 1910.38(e) states, "An employer must designate and train employees to assist in a safe and orderly evacuation of other employees." OSHA regulation 29 CFR § 1910.38(f)(1) through (2) state "An employer must review the emergency action plan with each employee covered by the plan: when the plan is developed or the employee is assigned initially to a job; when the employee's responsibilities under the plan change; and when the plan is changed."

    c) OSHA 3088 guidance, 2001, states, "General training for your employees should address the following: Individual roles and responsibilities; Threats, hazards, and protective actions; Notification, warning, and communications procedures; Means for locating family members in an emergency; Emergency response procedures; Evacuation, shelter, and accountability procedures; Location and use of common emergency equipment; and Emergency shutdown procedures."

    d) Factory Mutual Insurance Company July 2021, Section 3.1 recommends consideration of whether "key personnel [have] been educated and trained for the site-specific exposures" and if "drills and periodic staff training [are] provided."

17) At the time of EPA's inspection, there had been no coordination with the groups that will be responding to ammonia emergencies, such as the fire department. (AOC 20) An example of an industry standard of care is:

a) California Accidental Release Prevention (CalARP) regulation Title 19, Division 2, Chapter 4.5, Article 7, Emergency Response, Section 2765.1(b)(1) states, "The owner or operator must document that response actions have been coordinated with the local fire department and hazardous materials response agencies."

b) Factory Mutual Insurance Company July 2021, Section 3.6.1, states, "Developing good relations between the fire service and facility management helps everyone understand the hazards at the facility and will help everyone understand concerns associated with the facility. . . . Good pre-incident planning involves conducting a site visit with the public fire service on the property so that if an emergency strikes, personnel and firefighters will act as a team."

Before filing a Determination of Violation, Compliance Order and Notice of Right to Request a Hearing ("Complaint"), EPA is extending to the Company an opportunity to advise EPA of any other information that the Company believes should be considered before the filing of such a Complaint. Relevant information may include any evidence of reliance on compliance assistance, additional compliance tasks performed subsequent to the inspection, or financial factors bearing on the ability to pay a civil penalty. EPA has reviewed the documents included in the Company's previous transmittals. These documents do not need to be resubmitted.

After review of the documents provided, EPA also requests clarifying information. With this letter and its enclosure ("Information Request"), EPA seeks further information and documents relating to the potential violations above. This Information Request is authorized pursuant to Section 114 of the CAA, 42 U.S.C. § 7414.

Please note that, pursuant to regulations located at 40 CFR Part 2, Subpart B, you are entitled to assert a business confidentiality claim covering any part of any submitted information as defined in 40 CFR § 2.201(c). Asserting a business confidentiality claim does not relieve you from the obligation to respond fully to this letter. Failure to assert such a claim makes the submitted information subject to public disclosure upon request and without further notice to you, pursuant to the Freedom of Information Act, 5 U.S.C. §§ 552 et seq. Information subject to a business confidentiality claim may be available to the public only to the extent set forth in the above-cited regulation. EPA has authority to use the information requested herein in an administrative, civil, or criminal action. In addition, EPA has not waived any rights to take enforcement action for past or future violations.

Any penalty proposed for violation of the CAA will be calculated pursuant to EPA's June 2012 "Combined Enforcement Policy for Clean Air Act section 112(r)(1), the General Duty Clause, and Clean Air Act section 112(r)(7) and 40 CFR Part 68, Chemical Accident Prevention Provisions"[2] ("112(r) Penalty Policy") and EPA's September 30, 1999 "Enforcement Response Policy for sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and section 103 of the Comprehensive Environmental Response, Compensation and Liability Act" ("EPCRA Penalty Policy").[3] These policies are subject to inflation adjustments under the Civil

[2] www.epa.gov/sites/production/files/documents/112rcep062012.pdf
[3] www.epa.gov/sites/production/files/documents/epcra304.pdf

Monetary Inflation Adjustment Rule, as well as other potential changes in EPA guidance.[4] Also, EPA's "Supplemental Environmental Projects Policy,"[5] describes the terms under which a commitment to perform an environmental project may be included in civil enforcement settlements.

Your response to this letter must be made by a letter, signed by a person or persons duly authorized to represent the Company. Please send any such response ***by email*** *to Bridget Johnson, Life Scientist, johnson.bridget@epa.gov and Madeline Gallo, Assistant Regional Counsel, Office of Regional Counsel, gallo.madeline@epa.gov.* ***Please provide such information so that it is received no later than thirty (30) calendar days after receipt of this letter.*** *EPA anticipates filing a Complaint in this matter unless the Company first advises EPA, with supporting information, of substantial reasons not to proceed as planned.*

EPA encourages the Company to explore the possibility of settlement. If you are interested in commencing settlement discussions, please contact Bridget Johnson of my staff at (415) 972-3766 or johnson.bridget@epa.gov, or have your counsel contact Madeline Gallo, Assistant Regional Counsel, at (415) 972-3539 or gallo.madeline@epa.gov, to schedule a meeting or conference call. We thank you in advance for your cooperation.

Thank you for your prompt attention to this matter.

Sincerely,

KAORU MORIMOTO

Digitally signed by KAORU MORIMOTO
Date: 2022.07.27 07:14:41 -07'00'

Kaoru Morimoto, Manager
Hazardous Waste and Chemical Section
Enforcement and Compliance Assurance Division

cc (via email):

Jose Garcia, S. Martinelli & Co., jgarcia@martinellis.com

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[4] Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2020) and Transmittal of the 2020 Civil Monetary Penalty Inflation Adjustment Rule, https://www.epa.gov/sites/production/files/2020-01/documents/2020penaltyinflationruleadjustments.pdf ; *see also* Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Penalty Inflation Adjustment Rule, www.epa.gov/sites/production/files/2014-01/documents/guidancetoamendepapenaltypolicyforinflation.pdf

[5] https://www.epa.gov/sites/production/files/2015-04/documents/sepupdatedpolicy15.pdf